IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1347 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARUBHA HALUBHA JETHVA & 4 - Petitioner(s)

Versus

DEPUTY COLLECTOR, STAMP DUTY VALUATION DEPT & 2 - Respondent(s)

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Appearance :

MR RC KAKKAD for Petitioner(s) : 1 - 5.
None for Respondent(s) : 1 - 2.
MR AD OZA GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/02/2006

ORAL JUDGMENT

1. Rule. Shri A.D.Oza, learned GP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Rajkot City Division-1, Rajkot dated 5.6.2003 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.2,13,910/- plus Rs.250/- by way of penalty in all Rs.2,14,160/- with regard to the document No.2660 executed and presented before the Sub-Registrar, Rajkot dated 30.1.1996 as well as communication dated 18.1.2006 by the Deputy Collector, Stamp Duty Valuation, City Division-1, Rajkot by which the petitioner is informed that the appeal / reference under Section-32(1) of the Bombay Stamp Act challenging the aforesaid order is filed after period of 90 days i.e. beyond the period of limitation, the said

application cannot be accepted as there are no powers to condone the delay and that application is filed.

4.Shri R.C.Kakkad, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order dated 5.6.2003 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.25,19,018/-. It is also vehemently submitted that the petitioner is neither served with the notice issued under Rule-4 of the Rules, nor even served with the impugned order dated 5.6.2003. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.3,80,000/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat*

reported in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

5. Shri A.D.Oza, learned GP appearing on behalf of the respondents answering the specific contention of the petitioner, has submitted that the respondent authorities sent the impugned order to the petitioner and he has also produced extract of outward register to show that in fact, the order was sent to the petitioner. However, Shri Oza, learned government Pleader is not in a position to dispute that in the impugned order dated 5.6.2003,

no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.25,19,018/-. The learned AGP is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of *Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.*(supra). However, the learned GP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

6.Heard the learned advocates appearing on behalf of the parties.

7.I have gone through the order passed by the Deputy Collector. Considering the submissions made on behalf of the parties, in my opinion, it is disputed question of facts that whether in fact the impugned order was served upon the petitioner earlier or not. But considering the outward register, it can be presumed that the order was

sent to the petitioner. However, in fact except the outward register there is nothing on record to show that the impugned order was served upon the petitioner. Even otherwise, in the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.25,19,018/-. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.25,19,018/-. It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.3,80,000/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the

Deputy Collector wants to rely to determine the valuation of the property in question. In view of the above, without entering into the larger question with regard to disputed question of facts as to service of notice and the impugned order, considering the merits of the case and the impugned order which is passed in cyclostyled manner and as such, no reasons have been assigned, this Court has decided the matter on merits and is inclined to remand the matter on merits on imposition of some costs which can be quantified at Rs.7500/-.

8. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The impugned order passed by the Deputy Collector, Stamp Duty Valuation, Rajkot City Division-1, Rajkot dated 5.6.2003 as well as order passed by the Deputy Collector, Stamp Duty Valuation, Rajkot City Division-1, Rajkot dated 18.1.2006 ordered to file the application made by the petitioner are

hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Rajkot City Division-1, Rajkot for deciding the same afresh in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, Rajkot City Division-1, Rajkot dated 5.6.2003 then in that case, the respondents are not required to refund the said amount at this stage and the same be treated as deposit and it would be subject to the ultimate outcome of the proceedings on remand.

9.As agreed by the learned advocate appearing on

behalf of the petitioner which the petitioner is directed to deposit with the Deputy Collector, Stamp Duty Valuation a cost of Rs.7500/- on or before 6th March, 2006. It is also agreed by the learned advocate appearing on behalf of the petitioner that the petitioner will appear before the Deputy Collector, Stamp Duty Valuation, Rajkot on 6.3.2006 and no further notice needs to be served upon the petitioner and this itself be treated as notice of hearing to the petitioner. Accordingly, the petitioner to appear before the Deputy Collector concerned on 6th March, 2006 at the first instance for making submissions and thereafter next date of hearing can be fixed by the respondents if so requires.

10. Rule is made absolute to the aforesaid extent, however, with costs accordingly.

Direct Service is permitted.

(M.R.SHAH, J.)

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